

REMARKS/ARGUMENTS

After the foregoing Amendment, Claims 1-24 are currently pending in this application. Claims 1-24 have been amended to correct informalities. In the specification, paragraphs [0003], [0010], and [0044] as well as the Abstract have also been amended to correct informalities. Applicant submits that no new matter has been introduced into the application by these amendments.

Objections to the Specification

The Examiner objected to the specification because of minor informalities. The specification and Abstract have been amended to correct these minor informalities, as noted above. Accordingly, withdrawal of the objections to the specification and Abstract are respectfully requested.

Claim Objections

The Examiner objected to claims 1-24 because of minor informalities in the claim language. Applicant has amended claim 1-24 to correct the informalities. Additionally, the parenthetical references to element numbers have been deleted to avoid inconsistencies. Accordingly, withdrawal of the objection to claims 1-24 is respectfully requested.

Double Patenting Rejection

In the Action, claims 1-24 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-24 of the inventor's co-pending U.S. Patent Application No. 10/530,803. Applicant respectfully traverses this rejection.

Claim 1 is directed to an adjusting device for adjusting a camshaft relative to a camshaft gear wheel that is driven by a crankshaft. The adjusting device includes an input shaft for driving an eccentric drive element as well as first and second adjustment parts. The first part having includes webs which are interspaced in a peripheral direction and between which chambers are formed. The second part includes internal gearing, and a number of teeth that are arranged inside the chambers while being interspaced in the peripheral direction. Additionally, the adjusting device includes an inner contact surface for resting against an eccentric drive element and an outer contact surface for engaging inside the internal gearing. When the input shaft rotates, the teeth in the chambers can execute rotational movements about rotational axes parallel to a rotational axis (A) of the first and the second parts. The first part of the adjusting device is mountable on a camshaft, such that the webs of the first part can interlock with the gearing of the second part that is mountable on a camshaft wheel. The adjusting device allows the camshaft

and camshaft wheel to be continuously adjusted with respect to one another while providing smooth-running operability and making a high gear reduction achievable. The camshaft adjustment device is specifically claimed for adjustment of a camshaft gear wheel (30) relative to a camshaft (20), and both of these elements are required in the claims.

In contrast, Klindworth 10/530,803 discloses an adjusting device for adjusting two parts relative to one another that is not for use with adjusting the valve timing of a camshaft. Claim 1 of Klindworth 10/520,803 explicitly states that it is an adjusting device "other than for a device for adjusting the valve timing of a camshaft", and lacks the camshaft wheel and camshaft.

A non-statutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim because the examined application claim is either anticipated by, or would have been obvious over, the reference claims. See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); and *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985). As discussed above, Claim 1 of the present application is directed to an adjustment device for adjusting a camshaft relative to a camshaft gear wheel. Adjusting the camshaft changes the valve timing which is directly contradicted by the recitation of Klindworth

10/530,803. Since the adjusting device of Claim 1 includes a camshaft and camshaft gear wheel that it is mounted between, it would not be obvious in view of the Klindworth 10/530,803 specific teaching against this.

The purpose of an obviousness-type double patenting rejection is to prevent the issuance of a second patent that would provide an unjustified extension of the term of the right to exclude granted by a patent. See *Eli Lilly & Co. v. Barr Labs., Inc.*, 251 F.3d 955, 58 USPQ2d 1869 (Fed. Cir. 2001); *Ex parte Davis*, 56 USPQ2d 1434, 1435-36 (Bd. Pat. App. & Inter. 2000). As claim 1 is patentably distinct from the subject matter of Klindworth 10/530,803, the present claims which recite an adjusting device, camshaft wheel and camshaft would not provide an unjustified extension of the term of the right to exclude granted by a patent even if Klindworth 10/530,803 were to also issue. This is clearly the case as Klindworth 10/530,803 explicitly disclaims the adjusting device for the valve timing of a camshaft. Accordingly, withdrawal of the obviousness-type double patenting rejection of claim 1 in view of this reference is respectfully requested.

Claim 2-24 are dependent upon claim 1, which the Applicant believes is allowable. Accordingly, withdrawal of the obviousness-type double patenting rejection of claims 2-24 is also respectfully requested.

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Application No.: 10/530,508

Conclusion

If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephone interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

In view of the foregoing amendments and remarks, Applicant respectfully submits that the present application, including claims 1 - 24, is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

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